

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of

MULTIMEDIA CABLEVISION, INC.

*Complainant,*

v.

SOUTHWESTERN BELL  
TELEPHONE COMPANY

*Respondent.*

P.A. No. 95-008  
CS Docket No. 96-181

DOCKET FILE COPY ORIGINAL

To: The Honorable Arthur I. Steinberg, Administrative Law Judge

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Multimedia Cablevision, Inc., Complainant herein, and Southwestern Bell Telephone Company ("SWBT"), Respondent herein, jointly request approval of their settlement of this matter and to terminate the above-captioned matter. Good cause exists for this Request, which is in the public interest, and in support hereof Complainant and Respondent jointly state:

1. Complainant initiated this action on December 30, 1994.
2. After the parties' submission of pleadings and related materials with respect to the matters at issue in the proceeding, the Cable Services Bureau ("Bureau") issued its Order ("HDO") on September 3, 1996 deciding certain issues raised in the proceeding, and designating others for hearing before an Administrative Law Judge.
3. On September 11, 1996 the Chief Administrative Law Judge assigned this matter to the Presiding Officer and established a schedule for the case.

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4. On October 3, 1996, Complainants filed a Petition for Clarification with the Bureau. Respondent opposed that Petition on October 15, 1996.

5. On October 3, 1996, Respondents filed with the Presiding Officer a Motion for Acceptance of Appearance. Respondent opposed that Motion on October 15, 1996.

6. On October 23, 1996 the parties filed with the Presiding Officer a Joint Motion for Extension of Time in which they requested a 30-day extension of the pending case deadlines in which to effect a complete settlement of all outstanding issues.

7. On October 23, 1996 Multimedia filed with the Commission a Consent Motion for Extension of Time in which it requested a 30-day extension of the then-pending October 25, 1996 deadline in which to respond to SWBT's Opposition to Multimedia's Petition for Clarification.

8. Since the issuance of the HDO, the parties have worked cooperatively to "settle the case [and] narrow their differences," HDO ¶ 39, and now have reached a full and complete settlement of all claims regarding SWBT's Wichita conduit rate and billing for Wichita conduit occupancy.

9. A copy of a fully executed copy of the settlement agreement is attached as Attachment 1.

10. Contemporaneous with the filing of this Request, and to reflect the fact that the parties have resolved and settled the issues in this proceeding, Complainant has notified the Commission of its withdrawal of its October 3, 1996 Petition for Clarification.

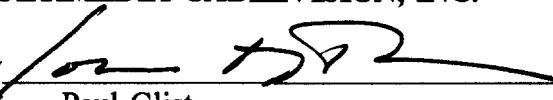
11. Because the parties have agreed to resolve all matters at issue in this proceeding, all matters pending before the Presiding Officer are now moot.

12. Grant of this Joint Request and acceptance of the settlement agreement is in the public interest, because it would save the Commission, the Bureau and the parties costly litigation expenses.

WHEREFORE, Complainant and Respondent for the reasons set forth above, jointly request the Presiding Officer to accept the settlement agreement of the parties, and terminate this proceeding.

Respectfully submitted,

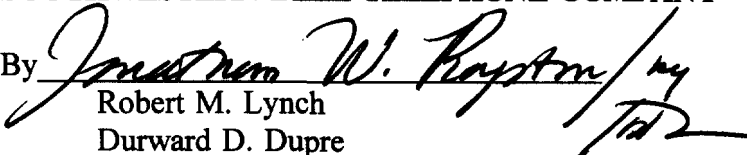
**MULTIMEDIA CABLEVISION, INC.**

By 

Paul Glist  
John Davidson Thomas  
**COLE, RAYWID & BRAVERMAN, L.L.P.**  
Second Floor  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-3458  
(202) 659-9750

Its Attorneys

**SOUTHWESTERN BELL TELEPHONE COMPANY**

By 

Robert M. Lynch  
Durward D. Dupre  
Mary W. Marks  
Jonathan W. Royston

Attorneys for  
Southwestern Bell Telephone Company  
One Bell Center  
St. Louis, Missouri 63101  
(314) 235-2507

November 8, 1996

**INDEX TO ATTACHMENTS**

Attachment 1 .....	Executed Settlement Agreement
Attachment 2 .....	Proposed Order

## **ATTACHMENT 1**

## SETTLEMENT AGREEMENT

This settlement agreement is made and entered into this 5<sup>th</sup> day of November, 1996 by and between MULTIMEDIA CABLEVISION, INC. ("Multimedia") and SOUTHWESTERN BELL TELEPHONE COMPANY ("SWBT").

On December 30, 1994, Multimedia filed a complaint (the "Complaint") against SWBT pursuant to the Pole Attachment Act of 1978, 47 U.S.C. §224 (the "PAA"), now pending as CS Docket No. 96-181, PA 95-008, alleging, *inter alia*, that the rate for attachments to SWBT's conduit in Kansas exceeded the maximum rate allowed by the PAA and the Commission's Pole Attachment Rules, §§1.1401 et seq.

Following the parties' filings pursuant to the Pole Attachment Rules, the Commission designated the Complaint for hearing in its Memorandum Opinion and Hearing Designation Order, CS Docket No. 96-181, PA 95-008, adopted August 26, 1996 and released September 3, 1996 (the "HDO"). The HDO also resolved certain issues for purposes of adjudication of this Complaint.

SWBT denies that it has charged an excessive conduit attachment rate and otherwise denies the allegations of the Complaint, except as expressly admitted in SWBT's Response to the Complaint or in SWBT's other filings in this proceeding.

In light of the HDO, the parties now wish to fully settle this matter and reach an agreement concerning certain future rates for conduit attachments by Multimedia in Kansas.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

1. Complainant executes this agreement for itself, its predecessors, successors, assignees and anyone or any entity claiming through it for the Complainant's claims asserted in FCC Docket No. P.A. 95-008. This agreement does not affect present or future claims by Complainant, its predecessors, successors, assignees, subsidiaries or affiliates which concern matters other than SWBT's conduit attachment rates for 1995 through 1998.
2. SWBT executes this agreement for itself, its predecessors, successors, assignees, and anyone or any entity claiming through it. This agreement does not affect the present or future participation of either of the parties hereto in rulemaking or other similar non-complaint proceedings related to the PAA, including, but not limited to, any proceedings to modify the Commission's Pole Attachment Rules or its formula for pole and conduit attachment rates pursuant to the Telecommunications Act of 1996 (the "1996 Act") or otherwise.
3. For the period since the filing of the Complaint on December 30, 1994 and continuing through December 31, 1998, SWBT agrees to use the "half-duct convention" as articulated in the HDO. Pursuant to this "half-duct convention," each foot of ductspace occupied by Multimedia's cable facilities will be billed at either a half-duct rate or a full duct rate. The full duct rate will apply to the foot of ductspace only if Multimedia's cable facilities preclude use by other conduit attachers of the other half of the duct. Otherwise, the half-duct rate will apply.
4. In order to reach a settlement in this proceeding, SWBT has agreed that it shall

pay to Multimedia within 30 days after any final Commission order approving a settlement, a lump sum settlement payment in the amount of \$35,058.83.

5. For the period from January 1, 1995 through December 31, 1998, the parties hereby agree that the half-duct rate shall be twenty-three cents (\$0.23) per linear foot, using the "half-duct convention" as articulated in the HDO.

6. The parties hereby agree that their Licensing Agreement for Conduit Occupancy dated January 15, 1986 (the "Licensing Agreement") shall be deemed amended hereby to provide for billing according to the "half-duct convention" described in paragraph 3 above at the agreed upon rate set forth in paragraph 5 above.

7. The parties hereby agree to jointly request that the Presiding Judge approve this settlement and enter an order terminating this proceeding. Copies of the Joint Request for Approval of Settlement Agreement (the "Joint Request") and draft Order are attached hereto as Exhibit "A". The parties agree to execute and file the Joint Request within ten (10) business days after execution of this Agreement. The parties' obligations hereunder are contingent upon the finality of an order granting the Joint Request or otherwise approving this settlement, terminating this proceeding and dismissing the Complaint with prejudice.

8. Complainant hereby releases, acquits and fully discharges Southwestern Bell Telephone Company, Southwestern Bell Corporation, and all subsidiaries and affiliates of Southwestern Bell Corporation, and their officers, directors, agents, employees, representatives, successors and assigns from any and all claims concerning SWBT's Kansas conduit attachment rates and billing procedures alleged in the Complaint or arising out of or in connection with the



matters alleged therein. Further, Complainant agrees not to file any complaint challenging SWBT's rates for conduit attachments for 1995 through 1998 agreed upon above or any lawsuit or claim against SWBT challenging such rates agreed upon above. This agreement will not prejudice Complainant's right to bring a subsequent and independent action challenging any new or different rates set by SWBT after December 31, 1998, nor will it prejudice any such action challenging the continued imposition of the current rates after December 31, 1998. It is understood and agreed that this agreement does not apply to conduit attachment rates between the parties after December 31, 1998 and the conduit attachment rates charged by SWBT after December 31, 1998 will be subject to any applicable rules in effect at that time.

9. The parties agree that this agreement is a compromise settlement of disputed claims and that this agreement will not be construed as an admission of liability by either party. This agreement shall not provide third parties with any remedy, claim, liability or other right.

10. This agreement contains the entire agreement between the parties with respect to the matters described herein, and all prior agreements, oral or written presentations, statements, understandings, proposals, and undertakings with respect to such matters are superseded and replaced by the provisions of this agreement. This agreement cannot be modified or terminated except by a written document executed by the authorized representatives of the parties hereto. This agreement shall be interpreted in accordance with the laws of Missouri.

11. The parties hereto represent and acknowledge that this agreement has been explained to each party by each party's legal counsel and further that the individual executing this agreement on behalf of that party has the requisite authority to so execute.

12. The parties specifically agree to be bound by the terms of this settlement agreement even if the PAA, or the Commission's Rules thereunder, are amended, superseded or repealed prior to December 31, 1998.

13. This agreement may be executed in counterparts.

IN WITNESS THEREOF, the parties hereby execute this agreement effective as the date first written above.

MULTIMEDIA CABLEVISION, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SOUTHWESTERN BELL TELEPHONE COMPANY

By: G. R. Chicoine

Name: G. R. Chicoine


Title: Executive Director-Finance/Regulatory

12. The parties specifically agree to be bound by the terms of this settlement agreement even if the PAA, or the Commission's Rules thereunder, are amended, superseded or repealed prior to December 31, 1998.

13. This agreement may be executed in counterparts.

IN WITNESS THEREOF, the parties hereby execute this agreement effective as the date first written above.

MULTIMEDIA CABLEVISION, INC.

By: 

Name: Ronald L. Marnell

Title: Vice President

SOUTHWESTERN BELL TELEPHONE COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit "A"

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

MULTIMEDIA CABLEVISION, INC.

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v.

SOUTHWESTERN BELL  
TELEPHONE COMPANY

*Respondent.*

P.A. No. 95-008  
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To: The Honorable Arthur I. Steinberg, Administrative Law Judge

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3. On September 11, 1996 the Chief Administrative Law Judge assigned this matter to the Presiding Officer and established a schedule for the case.

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8. Since the issuance of the HDO, the parties have worked cooperatively to "settle the case [and] narrow their differences," HDO ¶ 39, and now have reached a full and complete settlement of all claims regarding SWBT's Wichita conduit rate and billing for Wichita conduit occupancy.

9. A copy of a fully executed copy of the settlement agreement is attached as Exhibit A.

10. The parties have notified Bureau counsel of their settlement of this matter and of their intention to file this Joint Request. Bureau counsel consents to, and supports, this Joint Request.

11. Contemporaneous with the filing of this Request, and to reflect the fact that the parties have resolved and settled the issues in this proceeding, Complainant has notified the

Commission of its withdrawal of its October 3, 1996 Petition for Clarification.

12. Because the parties have agreed to resolve all matters at issue in this proceeding, all matters pending before the Presiding Officer are now moot.

13. Grant of this Joint Request and acceptance of the settlement agreement is in the public interest, because it would save the Commission, the Bureau and the parties costly litigation expenses.

WHEREFORE, Complainant and Respondent for the reasons set forth above, jointly request the Presiding Officer to accept the settlement agreement of the parties, and

terminate this proceeding.

Respectfully submitted,

**MULTIMEDIA CABLEVISION, INC.**

By \_\_\_\_\_

Paul Glist  
John Davidson Thomas  
**COLE, RAYWID & BRAVERMAN, L.L.P.**  
Second Floor  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-3458  
(202) 659-9750

Its Attorneys

**SOUTHWESTERN BELL TELEPHONE COMPANY**

By \_\_\_\_\_

Robert M. Lynch  
Durward D. Dupre  
Mary W. Marks  
Jonathan W. Royston

Attorneys for  
Southwestern Bell Telephone Company

One Bell Center  
St. Louis, Missouri 63101  
(314) 235-2507

Its Attorney

November 5, 1996

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

MULTIMEDIA CABLEVISION, INC.

*Complainant,*

v.

SOUTHWESTERN BELL  
TELEPHONE COMPANY

*Respondent.*

P.A. No. 95-008  
CS Docket No. 96-181

**ORDER**

1. This matter arises from Complainant's and Respondent's (collectively "Parties") Joint Request for Approval of Settlement Agreement and Motion To Terminate the Proceeding ("Joint Motion") submitted November 5, 1996.

2. The Presiding Officer has reviewed the Parties' Joint Request and Settlement Agreement submitted with that Request and finds that the parties now have reached a full and complete settlement of all claims regarding Respondent's Wichita conduit rate and billing for conduit occupancy. The Presiding Officer finds further that all issues designated for hearing in the Bureau's Hearing Designation Order dated September 3, 1996, ("HDO") and all pending matters arising since the issuance of the HDO have been resolved between the parties, and that the public interest would be served grant of the parties' Joint Request.

**WHEREFORE**, in consideration of these facts and findings, it is hereby

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**ORDERED** this \_\_\_\_ day of \_\_\_\_\_ that the Settlement Agreement submitted by the parties as Exhibit A to their Joint Request is deemed to be in the public interest; and it is further

**ORDERED** that this proceeding is terminated, with all pending motions dismissed as moot; and it is further

**ORDERED** that copies of this Order shall be transmitted to the parties appearing below.

Arthur I. Steinberg, Administrative Law Judge

**Parties:**

Marjorie Reed Green  
Cable Services Bureau  
Federal Communications Commission  
2033 M Street, NW  
Washington, D.C. 20554

**MULTIMEDIA CABLEVISION, INC.**

Paul Glist  
John Davidson Thomas  
**COLE, RAYWID & BRAVERMAN, LLP.**  
Second Floor  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-3458  
(202) 659-9750

**Its Attorneys**

**Southwestern Bell Telephone Company**

Robert M. Lynch  
Durward D. Dupre  
Mary W. Marks  
Jonathan W. Royston  
One Bell Center  
St. Louis, Missouri 63101  
(314) 235-2507

Its Attorneys

## **ATTACHMENT 2**

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

MULTIMEDIA CABLEVISION, INC.

*Complainant,*

v.

SOUTHWESTERN BELL  
TELEPHONE COMPANY

*Respondent.*

P.A. No. 95-008  
CS Docket No. 96-181

**ORDER**

1. This matter arises from Complainant's and Respondent's (collectively "Parties") Joint Request for Approval of Settlement Agreement and Motion To Terminate the Proceeding ("Joint Motion") submitted November 5, 1996.

2. The Presiding Officer has reviewed the Parties' Joint Request and Settlement Agreement submitted with that Request and finds that the parties now have reached a full and complete settlement of all claims regarding Respondent's Wichita conduit rate and billing for conduit occupancy. The Presiding Officer finds further that all issues designated for hearing in the Bureau's Hearing Designation Order dated September 3, 1996, ("HDO") and all pending matters arising since the issuance of the HDO have been resolved between the parties, and that the public interest would be served grant of the parties' Joint Request.

**WHEREFORE**, in consideration of these facts and findings, it is hereby

**ORDERED** this \_\_\_\_ day of \_\_\_\_\_ that the Settlement Agreement submitted by the parties as Exhibit A to their Joint Request is deemed to be in the public interest; and it is further

**ORDERED** that this proceeding is terminated, with all pending motions dismissed as moot; and it is further

**ORDERED** that copies of this Order shall be transmitted to the parties appearing below.

---

Arthur I. Steinberg, Administrative Law Judge

Parties:

Marjorie Reed Green  
**Cable Services Bureau**  
**Federal Communications Commission**  
2033 M Street, NW  
Washington, D.C. 20554

**MULTIMEDIA CABLEVISION, INC.**

Paul Glist  
John Davidson Thomas  
**COLE, RAYWID & BRAVERMAN, L.L.P.**  
Second Floor  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-3458  
(202) 659-9750

Its Attorneys

**Southwestern Bell Telephone Company**

Robert M. Lynch  
Durward D. Dupre  
Mary W. Marks  
Jonathan W. Royston  
One Bell Center  
St. Louis, Missouri 63101  
(314) 235-2507

Its Attorneys

**CERTIFICATE OF SERVICE**

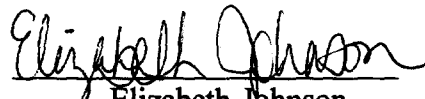
I, Elizabeth Johnson, a secretary in the law firm of Cole, Raywid & Braverman, L.L.P., hereby certify that a copy of the foregoing was mailed by first-class mail, postage prepaid, this 8th day of November 1996, to the following:

\*Michael McMenamin  
Federal Communications Commission  
2033 M Street, NW - Room 801-B  
Washington, DC 20554

\*Elizabeth Beaty  
Federal Communications Commission  
2033 M Street, NW - Room 904-A  
Washington, DC 20554

Kansas Corporation Commission  
ATTN: Utilities Division  
1500 S.W. Arrowhead Road  
Topeka, KS 66604

Robert M. Lynch  
Richard C. Hartgrove  
Jonathan W. Royston  
Southwestern Bell Telephone Company  
One Bell Center, Suite 3526  
St. Louis, MO 63101

  
Elizabeth Johnson

\* Via Hand Delivery